



Inter-Tribal Workgroup Participants:

The Navajo Nation

Hopi Tribe

Ft. McDowell Yavapai Nation

Salt River Pima Maricopa Indian Community

Bureau of Indian Affairs, Office of Justice Services

STATEMENT OF

DORMA L. SAHNEYAH

HOPi TRIBAL CHIEF PROSECUTOR

REPRESENTING

AN INTERTRIBAL WORKGROUP

BEFORE THE

UNITED STATES SENATE

COMMITTEE ON INDIAN AFFAIRS

CONCERNING

THE TRIBAL LAW AND ORDER ACT

JULY 24, 2008

Thank you Chairman Dorgan and members of the committee for taking the time to seriously consider the needs of tribal justice systems in Indian Country.

My name is Dorma Sahneyah. I am an enrolled member of the Hopi Tribe. I have a law degree from Arizona State University School of Law and have served as Hopi Chief Prosecutor for the past 12 years.

I represent a workgroup consisting of tribal government leaders, chief justices and judges, lawyers, and behavioral health experts from the Hopi Tribe, Navajo Nation, Salt River

Pima-Maricopa Indian Community, Ft. McDowell Yavapai Nation, and the BIA Tribal Courts Program. Navajo Nation Chief Justice Herb Yazzie, Hopi Chairman Benjamin Nuvamsa and Salt River President Diane Enos are the workgroup leaders.

The workgroup submitted two memoranda to the Committee on April 21 and July 10. The first addresses what Indian justice is, and what it needs. The second addresses interagency provisions in the Indian Alcohol and Substance Abuse Prevention and Treatment Act. Both memoranda will be included as addenda to my written statement.

The core responsibilities of Indian justice are broader and more community-oriented than American justice. In addition to determining guilt and punishment, tribal courts have the responsibility for the overall well-being of the entire community. As a result, Indian justice demands that offenders take personal responsibility. Indian justice is not soft on crime and does not exclude detention and penalty fines. The responsibility of bringing restoration to our communities is a vital duty.

In all tribes, restoration generally requires that the offender be given real opportunity to make right the wrong and to become a productive member of the community. Community participation should be a given. Salt River takes community inclusion seriously so as to have located their detention center in the heart of their community, both for community access and to maintain the sense of community membership in inmates.

It is ironic that restoration under the American justice system is becoming increasingly important as an alternative to incarceration while tribes, eager for legitimacy, have for years been taught to unlearn these core duties of Indian justice or address them outside of the tribal court system.

Tribal courts typically are underfunded. Funding that is allocated for restoration programs is often given in piecemeal fashion through limited grants. Problem-solving courts which should be the pillar of Indian justice systems are considered alternative programming. Rehabilitative sentencing tools have been in short supply. We need treatment resources and facilities for alcohol and substance abuse, behavioral health counseling, meaningful

interagency collaboration, and the ability to control an offender's time in detention and rehabilitation facilities with the goal of full acceptance of personal responsibility for criminal behavior.

Our court systems are the principal players in the process of achieving restoration. Yet, our judges are constrained by limits on sentencing authority and fear of overstepping roles defined for them according to modern court systems. These constraints stem largely from more than a century of being told what is right and what will best work in Indian Country by others, who live lives far removed from Indian reservations and culture.

Restoration responsibilities cannot be incorporated into core tribal court functions without adequate resources in personnel, facilities, and funding.

We recommend that federal interagency coordination and collaboration in Indian alcohol and substance abuse presentation and treatment be given full focus and encouragement. The approach so far has been to compartmentalize responsibilities and services, discourage resource and information sharing, yet require that services be somehow jointly applied. The Hopi Healing to Wellness Court lacks federal agency collaboration partly for this reason. We recommend first that a consistent framework be established for interagency coordination and collaboration, that justice and health consolidate their playing field in Indian Country, and that programs be fully funded. I understand that some recommendations of the workgroup have already been incorporated into the bill and that funding remains an issue.

I would like to emphasize that our courts must be legitimate to *our* people. For many years, tribal court practitioners have strived to make tribal courts legitimate in the eyes of non-Natives. Seemingly, no matter how dedicated tribal courts are to their function, they are doomed to being perceived as substandard even when compared to local justice courts in some states like New York where part-time plumbers and retirees who lack any understanding of law have authority to sentence wrongdoers up to 2 years.

Our judges receive compulsory on-going trainings. Training is provided by tribal, state and federal programs and the National Judicial College at the University of Nevada, which is affiliated with the American Bar Association. All Hopi justices must be law school graduates. All Navajo Nation judges must be members of the Navajo Nation Bar. In our tribal courts, witnesses are sworn, records of court proceedings are maintained and accessible to the public, written, reasoned judgments must be produced for appeal purposes, and avenues exist for appeal in our appellate courts. Individuals in our respective courts are afforded all the basic rights guaranteed under the Indian Civil Rights Act.

We give great weight to due process of law. Additionally, our courts strive to meet greater and more encompassing rights based on our own common values of fundamental fairness.

I expect that persons with little or no knowledge of how tribal courts operate would be surprised at how similar tribal court procedures are to those of state and federal courts.

We acknowledge that much work lies ahead, and we stand ready to continue to work closely with the Committee and staff.

On behalf of the workgroup, thank you for the opportunity to testify today on these critically important issues.

Addenda:

1. "Accountability and Returning the Offender to the Community: Core Responsibilities of Indian Justice," April 21 Memorandum to the Senate Committee on Indian Affairs on the Proposed Indian Country Crime Bill, submitted by the Navajo Nation, The Hopi Tribe, and Fort McDowell Yavapai Nation.
2. "Workgroup Memorandum on the June 12 Discussion Draft of Indian Law and Order Bill, with Special Focus on the Indian Alcohol and Substance Abuse Prevention and Treatment Act (IASAPTA), Interagency Coordination Provisions," dated July 10, 2008, submitted by the Navajo Nation, the Hopi Tribe, Salt River Pima Maricopa Indian Community, and the BIA Office of Justice Services.